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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	CASE CLOSURE UNDER THE
MUR 6205)	ENFORCEMENT PRIORITY
FORT BEND DEMOCRATS)	SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated _____
_____ are forwarded to the

Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6205 as a low-rated matter.

In this matter, the complainant, Paul Ware, alleges that the Fort Bend Democrats ("FBD") may have violated the Federal Election Campaign Act of 1971, as amended ("Act"), by making more than \$1,000 in expenditures for the purpose of influencing a federal election and failing to register as a political committee and file disclosure reports with the Commission. Specifically, the complainant alleges that during the 2008 election cycle, the FBD purchased and distributed door hangers and other materials advocating the election of Rick Noreiga to the United States Senate and the election of Barack Obama for President. The complainant contends that, based on his personal knowledge and experience, the respondent's materials cost more than \$1,000 and, therefore, triggered the registration and reporting requirements of 2 U.S.C. §§ 433(a) and 434(a). Attached to the complaint is a copy of a door hanger which, according to the complainant, was distributed throughout the Fort Bend community. The front of the door hanger includes the banner "Vote Change! Vote Democratic!" above the image of then-candidate Barack Obama and text that states, in part, "Barack Obama can't change our nation's direction by himself. He needs all of our help and that means electing strong Democratic leaders to help him bring about a better America." The back of the door hanger includes the banner "Change We Can

1 Believe In" and lists the names of nine Democratic candidates, including Rick Noreiga for U.S. Senate
2 and eight other candidates for state, county and judicial offices. The door hanger also contains
3 instructions as to how the recipient might vote a straight Democratic Party ticket.

4 The FBD, responding through its Executive Director, Susan Bankston, contends that it is not a
5 federal committee and, therefore, it is not required to register with the Commission and file disclosure
6 reports. Additionally, the FBD states that the door hangers at issue were hand-delivered by volunteers,
7 did not advocate the election of a particular candidate, provided instructions on how to vote a straight
8 Democratic ticket using electronic voting machines, and did not incur any additional expenses.
9 Moreover, the FBD asserts that it did not make \$1,000 or more in expenditures for the benefit of
10 candidates for federal office. The FBD provided a copy of an invoice for the door hangers, which shows
11 that they cost a total of \$2,814.50, including tax. The FBD claims that, for the purposes of determining
12 "political committee" status, the total costs of the door hangers should be allocated among all of the
13 candidates whose names appeared on the door hangers, which would result in total expenditures of far
14 less than \$1,000, collectively, on behalf of federal candidates.¹ Finally, the FBD, which denies that it
15 "directly advocated the election of federal candidates," takes the position that the door hangers were
16 largely directed to the election of state and local candidates. According to its website at
17 <http://fortbenddemocrats.net/about/>, the FBD is a "local grassroots" organization that "works with" the
18 County Democratic Party.

19 Groups meeting one of the definitions of "political committee" at 2 U.S.C. § 431(4) must register
20 with the Commission and file periodic reports of receipts and disbursements. 2 U.S.C. §§ 433(a) and

¹ Specifically, the total cost of the door hangers, allocated among the nine candidates listed on the back, equals approximately \$313 per candidate ($\$2,814.50/9 = \312.72). Alternatively, according to the FBD's analysis, even if then-candidate Barack Obama is included, the cost of the door hangers would equal approximately \$281.45 per candidate ($\$2,814.50/10 = \281.45), or \$562.90 for federal candidates Barack Obama and Rick Noriega and \$2,251.90 for the eight remaining non-federal candidates. Another method of calculating the "federal" portion of the FBD's costs for the door hangers is to conclude that all or part of the front of the door hangers may be attributable to then-presidential candidate Barack Obama, for a cost of up to \$1,407.25. Additionally, one ninth (or approximately 11%) of the back of the door hangers may be attributable to another federal candidate, Rick Noriega, for another \$156.36. Thus, it is conceivable that as much as \$1,563.61 of the FBD's total expenses for the door hangers might be attributable to federal candidates.

1 434(a).² Three categories of organizations are included in the definition of "political committee" at
2 2 U.S.C. § 431(4), two of which might be applicable here: (A) "any committee, club, association, or
3 other group of persons" that receives "contributions" or makes "expenditures" in excess of \$1,000;³ or
4 (C) a "local committee of a political party" that receives contributions or makes payments in excess of
5 \$5,000, or makes contributions or expenditures in excess of \$1,000.⁴ Under 2 U.S.C. § 431(9)(B)(viii), a
6 payment by a state or local committee of costs of campaign materials "used by such committee in
7 connection with volunteer activities on behalf of nominees of such party" are exempt from the definition
8 of expenditure.

9 Based upon publicly available information and the record before us, it is unclear as to whether
10 the FBD constitutes a local committee of a political party, pursuant to 11 C.F.R. § 100.14(b) (defining
11 "local committee"). If the FBD is a local committee of a political party, and if the volunteer materials
12 exemption applied to the cost of the door hangers, then the applicable registration and reporting
13 threshold would be \$5,000 (rather than the \$1,000 threshold for expenditures), which would not be
14 triggered by the \$2,814.50 in costs associated with the door hangers. However, if the FBD is not a local
15 committee of a political party, or if it is but the volunteer materials exception does not apply, then, while
16 the federal portion of the expenses for the door hangers may have exceeded the \$1,000 threshold for
17 expenditures under 2 U.S.C. § 431(4)(C), applicable to local committees, or under 2 U.S.C. § 431(4)(A),
18 *applicable to other groups, it did so only by a very small margin. Further, if the FBD is not a*
19 *local committee, there is a lack of information suggesting that its major purpose is the*

² The complainant also alleged that the FBD created flyers and signs advocating federal candidates, but only included a copy of the door hanger with the complaint. The FBD did not address this allegation in its response.

³ Section 431(4)(B), which requires that any "separate segregated fund" ("SSF") established under section 441b(b) of the Act be registered with the Commission does not apply, as the FBD is not an SSF that was established to be "utilized for political purposes by a corporation [or] a labor union." 2 U.S.C. § 441b(2)(C).

⁴ The Act does not require a "local committee of a political party" to register with the Commission as a federal political committee, unless its activity in connection with a federal election exceeds one of three registration thresholds: (1) making more than \$1,000 in contributions or expenditures; (2) receiving more than \$5,000 in contributions; or (3) spending more than \$5,000 on exempt party activities. See 2 U.S.C. § 431(4)(C); 11 C.F.R. § 100.5(c).

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1 election or defeat of federal candidates.⁵ Thus, in light of the modest expenses associated with the
2 door hangers at issue, coupled with the Commission's priorities and resources, relative to other
3 matters pending on the Enforcement docket, the Office of General Counsel believes that the
4 Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v.*
5 *Cheney*, 470 U.S. 821 (1985).


6 **RECOMMENDATIONS**

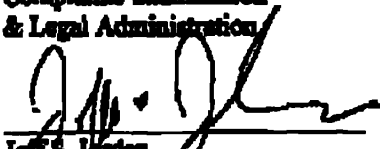
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8 The Office of General Counsel recommends that the Commission dismiss
9 MUR 6205, close the file, and approve the appropriate letters.


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Thomasenia P. Duncan
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3/26/10
Date

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⁵ The Supreme Court has stated that only organizations whose "major purpose" is federal campaign activity can potentially qualify as political committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986).